

# **Notebook #1 supplement**

(supplements Notebook #1 prepared for  
December 12, 2016 hearing)

Board of Adjustment Hearing,  
April 10, 2017

Case # C15-2016-0124

# **The Church in Austin And Other Neighbors**

Supplemental Objection Letter to  
the Hotel's Requested Variances  
(with Exhibits)

# THE CHURCH IN AUSTIN

2530 S. Congress Ave. Phone (512) 443-0078

Austin, Texas 78704 Fax (512) 443-0188

March 27, 2017

## Supplemental Objection Letter to the Hotel's Requested Variances

Re: Case # C15-2016-0124

Dear Board of Adjustment Members,

This Supplemental Objection Letter is a supplement to our "Objection Letter to the Hotel's Requested Variances", hereafter "Objection Letter", filed in this case (C15-2016-0124) for the Board of Adjustment hearing on December 12, 2016. That Objection Letter is in Notebook number 1 and includes exhibits, three of which are Notebook numbers 2-4.

The purpose of this supplemental letter is focus on the Board of Adjustment's legal requirements (criteria or rules) for granting variances according to its publication "A Community Guide to The City of Austin's Board of Adjustment: Practical Tips for Zoning Variances, Special Exceptions and Administrative Appeals", hereafter "Guidebook". This Guidebook was approved by the Board of Adjustment on April 13, 2015 in collaboration with the City Law Department.

Please consider the following eight points:

1. The City code zoning laws on compatibility standards are for the purpose of protecting residential and civic uses. Civic uses include religious assembly (The Church in Austin).
2. The City code allows for variances to compatibility standards.
3. According to the Guidebook (Appendix A), the Board of Adjustment can grant variances to the compatibility standards if the applicant can "establish facts that support the legal requirements for a variance":
  - a. "Hardship"
  - b. "Reasonable Use"
  - c. "Area Character"
4. **Exhibit 1** is the hotel developer's application for its variances.
5. **Exhibit 2** is a copy of pages 6-12 and Appendix A of the Guidebook. The shaded areas highlight some of the quotations from the Guidebook in our Objection Letter, some of which are compiled on the next page. These are some of the factors or guidelines the Board of Adjustment considers in determining the existence of hardship, no reasonable use, and not altering area character.

## **Rules and Guidelines for Variances**

### **Guidelines for Zoning Variances**

To get a variance, your property must have special characteristics that make it extremely hard to comply with a regulation without giving up a privilege enjoyed by similar properties in your area.

Self-created or financial hardships are not enough, nor are personal circumstances, design preferences, or desire for additional space.

Simply wanting to make your property more valuable is not sufficient for a variance.

### **Hardship**

A hardship cannot be personal, but must be based on unique physical features of the property for which the variance is sought.

- ...[A] hardship must not be self-imposed, not financial only...
- ...financial difficulties...cannot be the sole basis for finding a hardship.

A hardship cannot be self-created.

- For example, if a structure is designed in a manner that fails to comply with regulations, the structure's non-compliance isn't a hardship.

A hardship must be unique to the property, not general to the area where it's located.

- If steep slopes or small lots are common to a particular area, then neither condition is sufficiently unique to constitute a hardship by itself.
- The City's regulations alone cannot be the hardship. For example, an applicant cannot request a height variance and claim that the restrictions on building height constitute a hardship.

### **Reasonable Use**

A property is not left with no reasonable use just because a regulation limits the size or design of a structure or increases development costs.

A property does not need to be left completely undevelopable in order for the Board to find that a regulation does not allow for reasonable use.

- In general, the fact that a regulation reduces the potential profitability of an otherwise developable commercial or residential property does not constitute a lack of reasonable use.

### **Area Character & Purpose of Regulations**

An applicant should be able to show the Board that the variance will not significantly affect neighborhood character or harm adjacent properties.

For example...diminishing privacy to adjacent properties could have the effect of altering area character. Development that exceeds the size and scale typical of properties in the vicinity may also alter area character.

...setback restriction is intended to protect privacy, provide for open space, and avoid the aesthetic and safety concerns associated with over-crowding.

6. Part 3, pages 6-17, of our Objection Letter entitled “Reasons for Our Objections” explains why The Church in Austin and other Dawson neighbors oppose the variances and why the hotel has failed to meet the Board of Adjustment’s legal requirements for its requested variances.

7. The impacted Dawson residential neighbors oppose these variances as documented in Notebook numbers 2-4, although the Dawson Neighborhood Planning Contact Team (DNPCT) supported the pool and driveway waivers based on an incomplete and unapprovable site plan. When it was discovered that compatibility standards apply to the hotel’s entire property and the impacted Dawson neighbors were prevailingly opposed to the variances, we requested a revote and an additional vote on the building variances, to which the Chairman, Marty Harris, responded in an email on behalf of the DNPCT officers, “This is past our input phase and is in the City’s hands. DNPCT does not have a voice in this that will be heard or considered.” In contradiction to this, he and the Vice Chairman, Greg Anderson, submitted and presented a letter to the Board of Adjustment on the day of the hearing on February 13, 2017 supporting the variances. They told us one thing and did the exact opposite. Thus the impacted Dawson neighbors were denied the opportunity to voice their position by voting at the DNPCT once all the facts were known.

8. According to the Guidebook, page 9, “To grant a variance, the Board must find that the request meets the three specific criteria” described in point 3 above. The following chart summarizes pages 6-17 of our Objection Letter, which pages explain that the hotel has not met one of the three criteria for its pool, driveway, or building.

**Has the Hotel Met Legal Requirements for Granting Variances?**

Legal Requirement		Variance		
		Pool	Driveway	Building
1.	Reasonable Use	No	No	No
2.	Hardship			
	a. Unique	No	No	No
	b. Not general	No	No	No
	c. (Not self-created)	No	No	No
3.	Area Character			
	a. Not alter character of area	No		No
	b. Not impair use	No	No	No
	c. Not impair purpose of the regulations	No	No	No

In conclusion, the hotel developer has failed to prove that (1) applicable compatibility standards do not allow for a reasonable use of the property, (2) that the hardship is unique to the property, or (3) that the variances will not alter area character, impair the use of adjacent property, and impair the purpose of the compatibility standards. The hotel must prove all three to be granted the variances. The Church in Austin and other neighbors have provided evidence (1) that the compatibility standards do allow for a reasonable use of the property, (2) that hardship is not unique to the property, and (3) that the variances will alter area character, impair the use of adjacent property, and impair the purpose of the compatibility standards. Therefore,

we request that the Board of Adjustment deny the hotel's requests for variances for the pool, driveway, and building setback and height limitations from adjoining property.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tym Seay".

Tym Seay  
Chairman of the Board  
Of The Church in Austin

# Exhibit 1



## CITY OF AUSTIN

### Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

## Board of Adjustment General/Parking Variance Application

**WARNING: Filing of this appeal stops all affected construction activity.**

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

### For Office Use Only

Case # _____	ROW # _____	Tax # _____
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### Section 1: Applicant Statement

Street Address: 2510 S. Congress Ave.

Subdivision Legal Description:  
1.5300 ACR OF LOT 9 LIVE OAK GROVE ADDN

Lot(s): \_\_\_\_\_ Block(s): \_\_\_\_\_

Outlot: \_\_\_\_\_ Division: \_\_\_\_\_

Zoning District: CS-V-CO-NP; GR-V-CO-NP

I/We Nikelle Meade (Husch Blackwell) on behalf of myself/ourselves as authorized agent for Krug Development, Inc. affirm that on Month October Day 10 Year 2016, hereby apply for a hearing before the Board of Adjustment for consideration to (select appropriate option below):

Erect  Attach  Complete  Remodel  Maintain  Other: \_\_\_\_\_

Type of Structure: Hotel (3 stories high generally, and 4 stories on S. Congress and at the back)

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

PLEASE SEE PAGE 8.

## Section 2: Variance Findings

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

**NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.**

I contend that my entitlement to the requested variance is based on the following findings:

### Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

The current regulations do not allow for a reasonable use of the property because the long, narrow configuration of the property makes the property not reasonably developable if compatibility standards are applied.

### Hardship

a) The hardship for which the variance is requested is unique to the property in that:

Hardship is unique to this property because the property is zoned for dense commercial use but has a long, narrow configuration that makes it infeasible to develop in compliance with the City's comprehensive plan if the compatibility standards are applied.

b) The hardship is not general to the area in which the property is located because:

The hardship is not general to the area because no other tracts in the area are similarly situated and similarly configured.

**Area Character**

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The variance will not alter the character of the neighborhood because the area is highly commercial, the adjacent property which triggers compatibility functions as a multi-family development that would not normally trigger compatibility, and the property is located on a major mobility corridor.

**Parking** (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

- 1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

N/A

- 2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

N/A

- 3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

N/A

- 4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

N/A

### Section 3: Applicant Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature:  Date: 10/10/16

Applicant Name (typed or printed): Nikelle Meade

Applicant Mailing Address: 111 Congress Avenue, Suite 1400

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 479-1147

Email (optional – will be public information): nikelle.meade@huschblackwell.com

### Section 4: Owner Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature:  Date: 10/10/16

Owner Name (typed or printed): David Krug, President, Krug Development, Inc.

Owner Mailing Address: 4866 N. Clark Street #1N

City: Chicago State: IL Zip: 60640

Phone (will be public information): (773) 750-3706

Email (optional – will be public information): dkrug@krugdevelopment.com

### Section 5: Agent Information

Agent Name: Nikelle Meade

Agent Mailing Address: 111 Congress Avenue, Suite 1400

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 479-1147

Email (optional – will be public information): nikelle.meade@huschblackwell.com

### Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

Legal Description: 1.5692 acres of land, more or less, out of and a part of Lot or Block "9", of LIVE OAK GROVE, a subdivision in Travis County, Texas, according to the map or plat, of record in Volume Z, Page 615, of the Plat records of Travis County, Texas, and being the same property conveyed by Mark Stephen Shields and Rustin Craig Andrus to Charles William Wendlandt and Constance Finch Wendlandt in a deed dated March 10, 1993, recorded in Volume 11890, Page 1514, of the Real Property Records of Travis County, Texas.

## Additional Space (continued)

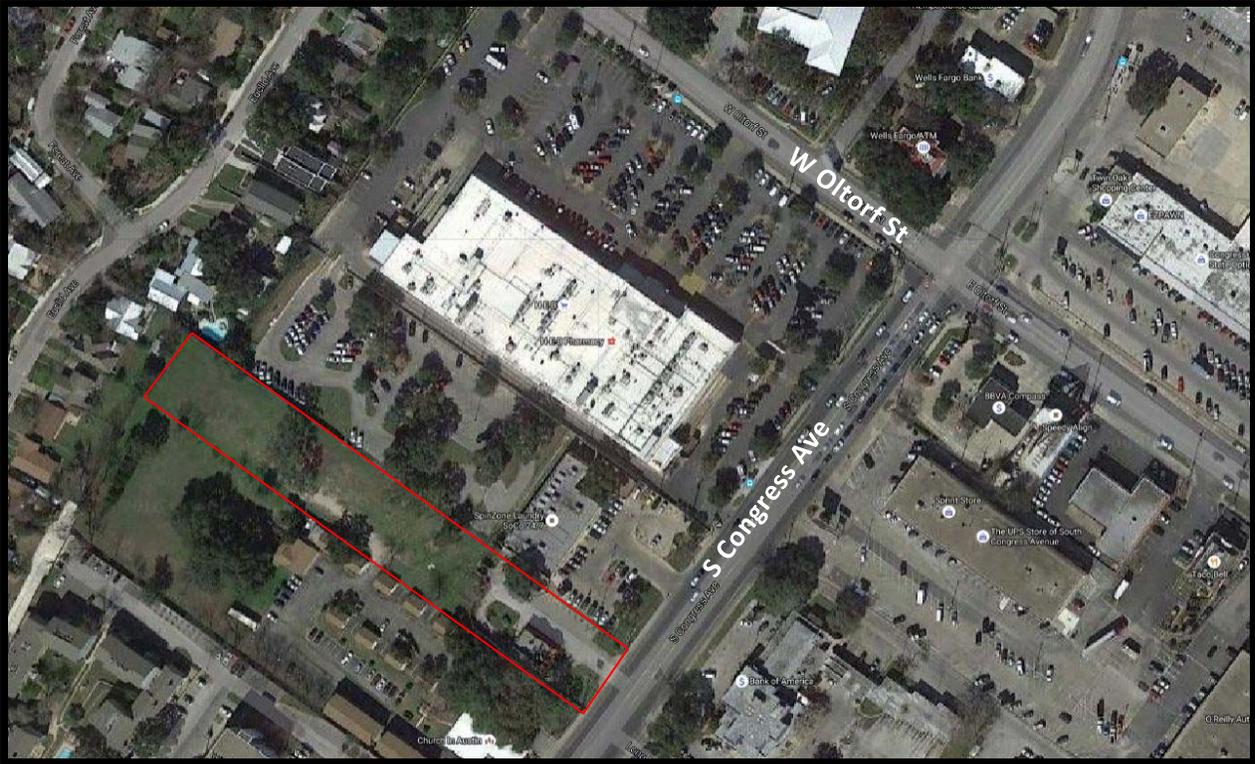
The applicant is requesting variances from Article 10, Compatibility Standards, as follows:

- A. Section 25-2-1063 (*Height Limitations and Setbacks for Large Sites*) (B) to increase the required setback from a property in an urban family residence (SF-5) or more restrictive zoning district or on which a use permitted in SF-5 or more restrictive zoning district is located from 25 feet to 0 feet; and to
- B. Section 25-2-1063 (*Height Limitations and Setbacks for Large Sites*) (C) (1) for a structure 50 feet or less from property in an SF-5 or more restrictive zoning district or on which a use permitted in an SF-5 or more restrictive zoning district is located from two stories and 30 feet to five stories and 60 feet; and to
- C. Section 25-2-1063 (*Height Limitations and Setbacks for Large Sites*) (C) (2) for a structure more than 50 feet and not more than 100 feet from property in an SF-5 or more restrictive zoning district or on which a use permitted in an SF-5 or more restrictive zoning district is located from three stories and 40 feet to five stories and 60 feet; and to
- D. Section 25-2-1064 (*Front Setback*) to increase the minimum front building line setback from at least 25 feet from a right-of-way if the tract on which the building is constructed adjoins property in an SF-5 or more restrictive zoning district or on which a use permitted in a SF-5 or more restrictive district is located and fronts on the same street as the adjoining property to 0 feet; and to
- E. Section 25-2-1067 (*Design Regulations*) (F) to permit an intensive recreational use, excluding a multi-use trail and including a swimming pool, tennis court, ball court, or playground to be constructed 50 feet or less from adjoining property in an SF-5 or more restrictive zoning district or on which a use permitted in an SF-5 or more restrictive zoning district is located; and to
- F. Section 25-2-1067 (*Design Regulations*) (H) to decrease minimum setback distance of the driveway from adjacent properties to be constructed on a site less than 125 wide from 15 feet to 5 feet

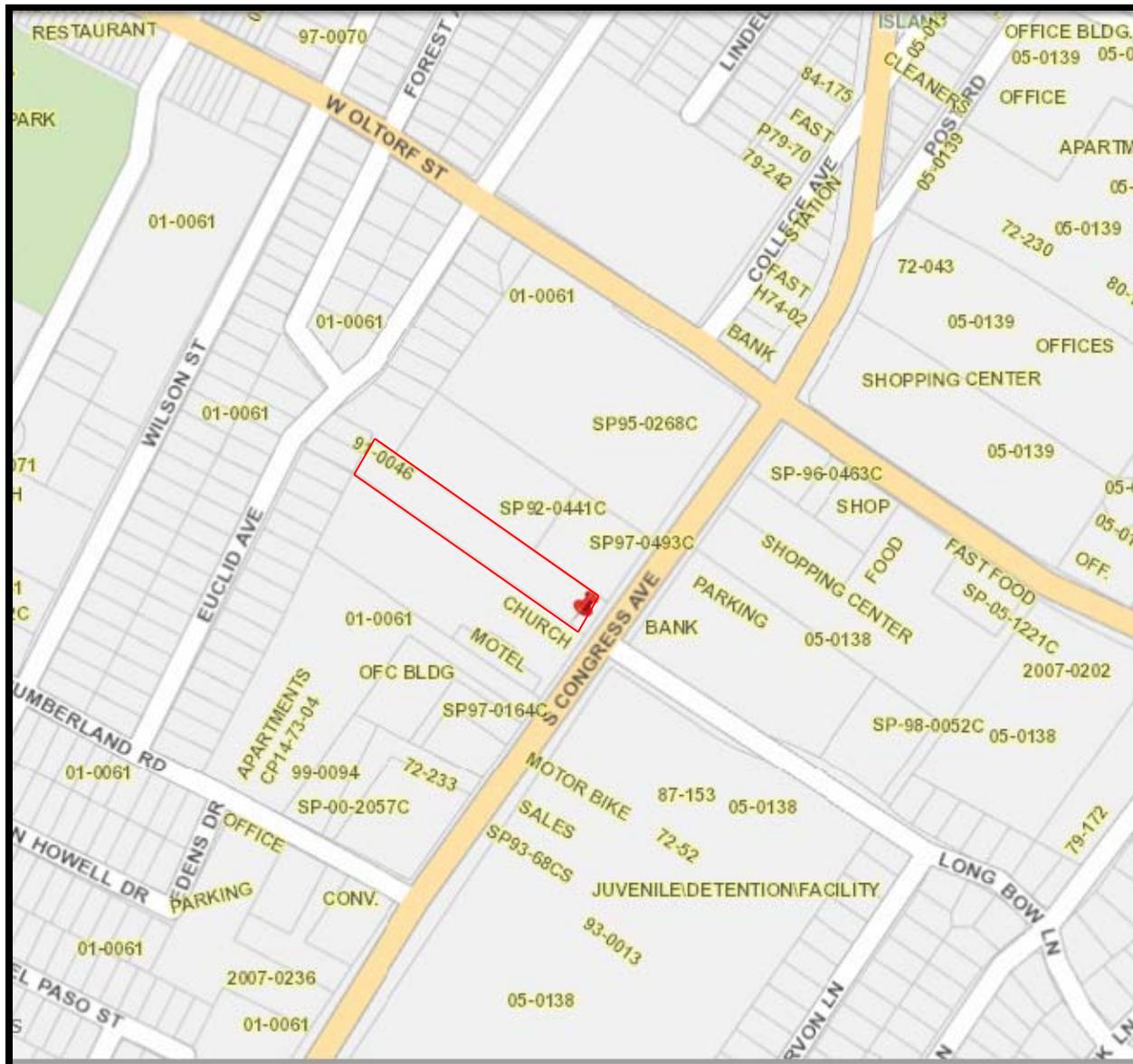
in order to erect a hotel and swimming pool in a "CS-V-CO-NP", General Commercial Services - Vertical Mixed Use - Conditional Overlay - Neighborhood Plan and a "GR-V-CO-NP", Community Commercial - Vertical Mixed Use - Conditional Overlay - Neighborhood Plan zoning district. (Dawson)

**SAVE**

# Location Map



# Location Map



# 2510 South Congress

Birds Eye View

## Legend

- 📍 2510 S Congress Ave
- 🏪 Church In Austin
- 📏 Feature 1
- 🏫 St Ignatius Martyr Catholic School
- 🏠 TXU Energy Payments (inside Heb #045)

HEB

2510 S Congress Ave

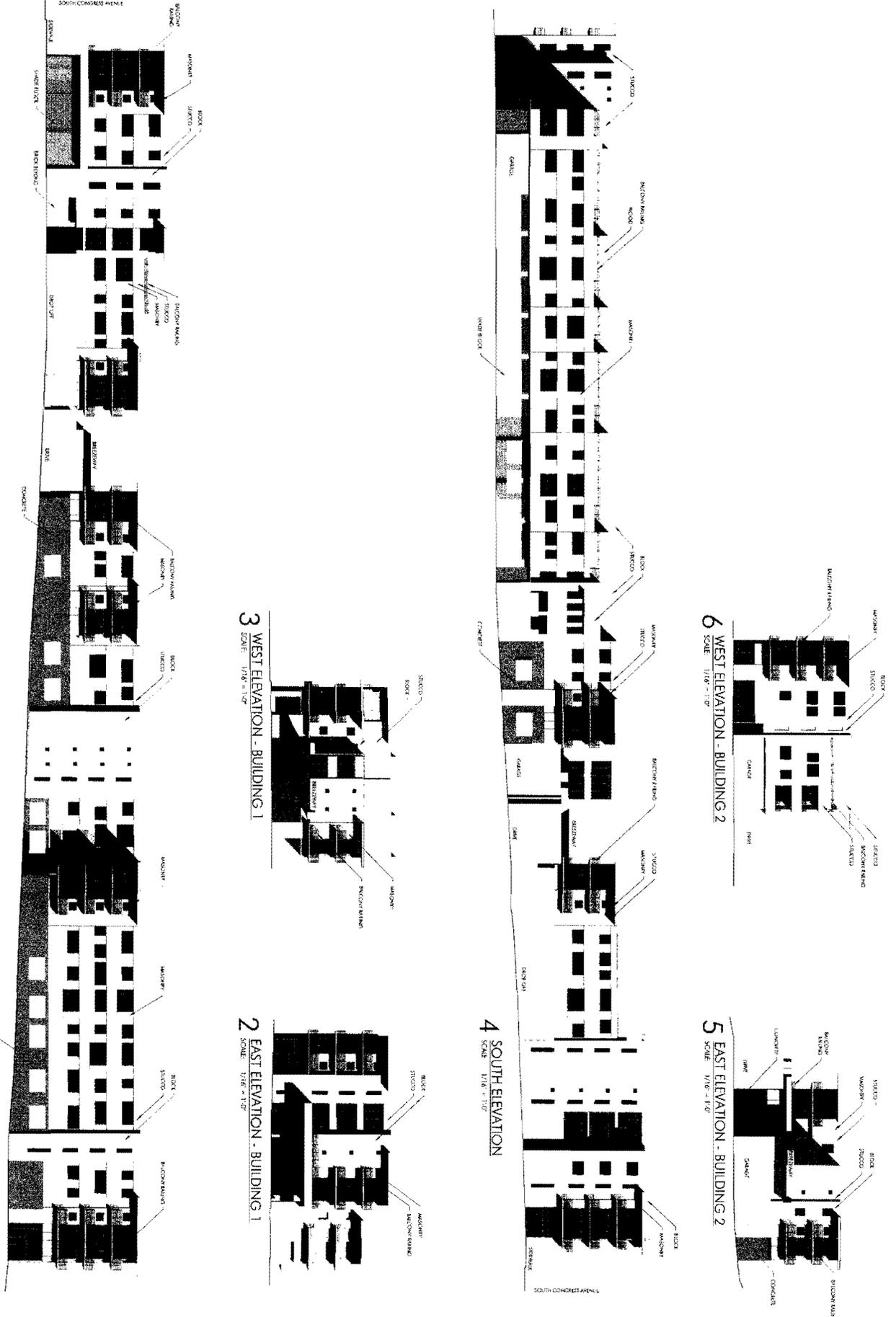
CHURCH



100 ft

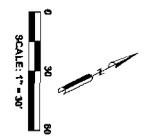
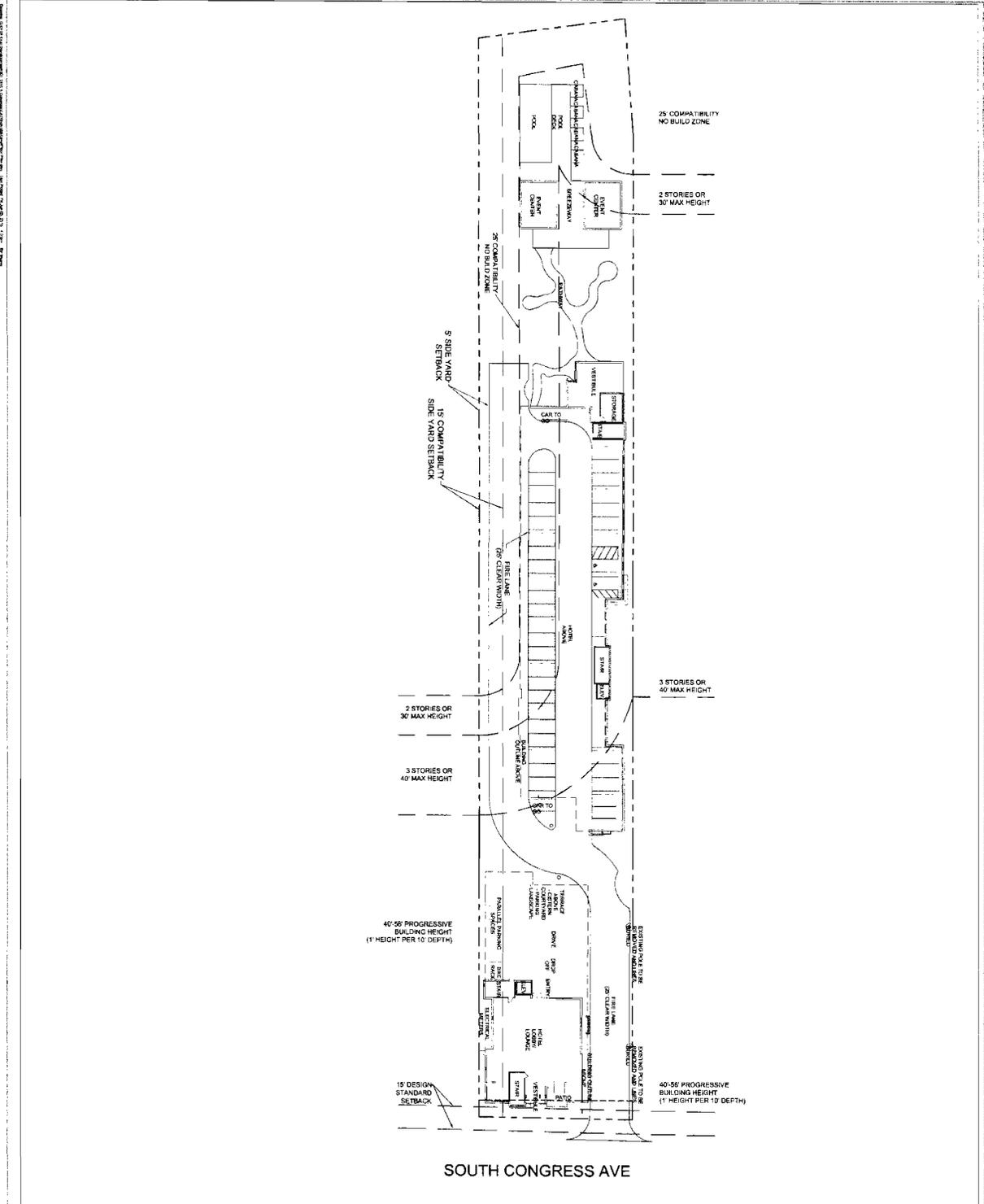
Google earth

Image Landsat  
© 2015 Google



# The Guesthouse Hotel

2510 South Congress Avenue  
Austin, Texas 78704



**2510 S CONGRESS**

MAY 2015  
WG PROJECT NO 0104-001

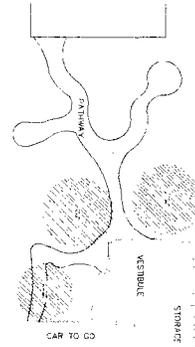
**EXHIBIT A**  
**THE GUESTHOUSE HOTEL**  
**2510 S CONGRESS AVE**



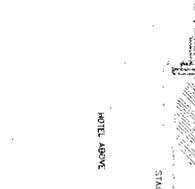
**ENGINEERING & DESIGN**  
FIRM # F-15324  
2007 S 4<sup>th</sup> STREET, SUITE 103  
AUSTIN, TEXAS 78704  
(512) 394-1900  
SHEET 1 OF 1



POOL LINK  
POOL  
EVENT CENTER  
BREAKWAY



VEHICLE  
CAR TO GO  
STORAGE  
STAR



HOTEL ABOVE  
STAR  
ELEV.

BUILDING OUTLINE ABOVE  
CAR TO GO



TRUCK  
CONTAINER  
LANDSCAPE  
DRIVE  
DUMP  
ENTRY  
ELEV.



HOTEL  
LOBBY  
CORNER  
VEHICLE  
STAR

SOUTH CONGRESS AVENUE

EXISTING POLE TO BE  
REMOVED AND LINES  
REMOVED

POLE LINE  
TO BE CLEAR  
(20' CLEAR  
WIDTH)

EXISTING POLE TO BE  
REMOVED AND LINES  
REMOVED

POLE LINE  
(20' CLEAR  
WIDTH)

PARALLEL PARKING  
SPACES

DWC STAR  
KNOX

BESTERSON  
KNOX

VEHICLE  
STAR

## Exhibit 2

# A COMMUNITY GUIDE TO THE CITY OF AUSTIN'S BOARD OF ADJUSTMENT: Practical Tips for Zoning Variances, Special Exceptions and Administrative Appeals

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Approved by the Board of Adjustment, on April 13, 2015, and prepared in collaboration with the City Law Department and Development Services Department.

**Boardmembers:**

Jeff Jack, Chair  
Melissa Hawthorne, Vice Chair  
Michael Von Ohlen  
Vincent Harding  
Sallie Burchett  
Bryan King  
Ricardo De Camps

**Legal Advisors:**

Brent Lloyd  
Cindy Crosby  
David Sorola

**Staff Support:**

Leanne Heldenfels  
Susan Walker  
Diana Ramirez

charged with considering requests to relax the strict application of development regulations to particular properties. Additionally, the Board is authorized to hear appeals of administrative decisions by city staff in enforcing and interpreting zoning regulations.

The Board of Adjustment is a “sovereign board,” which means that it makes final decisions on behalf of the City for those matters within its legal authority. A party aggrieved by the Board’s decision, whether a citizen or a city department, can appeal the Board’s decision to District Court in accordance with requirements of state law. The city council may not overturn a decision by the Board.

The Land Use Commission, which is divided into the Planning Commission and the Zoning & Platting Commission, is the other citizen board established to assist in the zoning process. Unlike the Board of Adjustment, the Commission functions in an advisory capacity on zoning matters by providing recommendations to the City Council on proposed rezones and regulatory amendments. The Commission consists of 13 members, one for each council office, and four ex officio members as established by city charter.

## **RULES & GUIDELINES FOR VARIANCES, SPECIAL EXCEPTIONS, AND APPEALS**

To make a request to the Board of Adjustment, the landowner or the landowner’s agent must file an application with city staff and then present his or her case to the Board at one of its regularly held public meetings or, in exceptional cases, at a special-called meeting. This section summarizes the specific applications that can be filed and the rules governing how the Board reviews an application. Copies of each application can be found in Appendices B-D.

### **A. Zoning Variances**

The most common type of application is a request for a zoning variance to reduce a numeric regulation, such as a yard setback or limit on impervious cover. The “Guidelines for Zoning Variances,” which appear on the following page, provide a useful summary of the criteria the Board uses in considering a variance and practical tips for presenting a variance case to the Board.

## *Guidelines for Zoning Variances*

To get a variance, your property must have special characteristics that make it extremely hard to comply with a regulation without giving up a privilege enjoyed by similar properties in your area.



### **Here's what you have to prove:**

- (a) A hardship that's unique to the property and not common to the area. Self-created or financial hardships are not enough, nor are personal circumstances, design preferences, or desire for additional space. ***Focus on the property, not the people.***
- (b) The regulation deprives your property of a "reasonable use" that's fundamental to its use & enjoyment and is allowed by zoning ordinance. Simply wanting to make your property more valuable is not sufficient for a variance.
- (c) Granting the variance would not change the character of your neighborhood, impair the use of adjacent property, or impair the purpose of the regulations. To satisfy these findings, proposed construction must be consistent with surrounding development in appearance and intensity.

### **Here's what you need to do:**

- ✓ Be prepared to explain what you're planning to build and why it requires a variance. Ask for the smallest variance needed to achieve your objective.
- ✓ A picture is often worth more than a 1000 words, so using scaled drawings and photographs is strongly encouraged.
- ✓ Reach out to your neighbors. Let them know what you're trying to do and work with them, as best you can, to address any reasonable concerns.
- ✓ Offer conditions that will lessen the impact of your variance.

## **1. *When Is A Variance Required? The Importance of Considering Alternate Designs***

The most common function of the Board of Adjustment is to consider requests for a variance from a site development regulation, such as a restriction on building height, setbacks, impervious cover, floor-to-area ratio, or any zoning regulation imposed under City Code Chapter 25-2 (*Zoning*). A variance relaxes the regulation by a specified amount; for example, increasing a height limit from 100 to 125 feet or a setback restriction from 20 to 15 feet from a property line. However, the Board cannot grant a variance to allow a use that is not permitted.

When a building permit or site plan application is submitted to city staff, they review it for compliance with the regulations in the Land Development Code and, in some cases, separate requirements of a neighborhood plan, small area plan, or regulating plan. During the review process, staff will notify a permit applicant if changes to the building plans are required in order to comply with applicable regulations. Staff cannot approve a permit or site plan that fails to comply with applicable regulations.

If an applicant believes that full compliance is impossible or unreasonable due to unique features of the property, he or she may seek a variance from the Board of Adjustment. The Board may approve a variance as requested by the applicant, deny the variance, or approve the variance with conditions it considers necessary to mitigate the impacts of development allowed by the variance. The Board's decision is final, unless appealed to district court in accordance with Chapter 211 of the Local Government Code.

A copy of the City's variance application is included in Appendix B. Please refer to "Guidelines for Zoning Variances" on the preceding page for general tips and the discussion below for more detailed information on how the process works.

## **2. *Basic Requirements for Obtaining a Variance.***

Before seeking a variance, an applicant should evaluate the feasibility of potential design changes that would bring a project into

compliance with city regulations and thus avoid the need for a variance. Those changes may require reducing square footage, moving new construction further away from a property line, or reducing the amount of impervious cover. If an applicant decides to seek a variance, he or she should be prepared to provide evidence to show what design changes were considered and why they were determined to be infeasible.

The Board of Adjustment may only approve a variance by a “super-majority” vote of at least nine out of 11 members. To grant a variance, the Board must find that the request meets the three specific criteria described below. An applicant should carefully consider these criteria, which are called “findings,” when deciding whether or not to request a variance. If an applicant chooses to request a variance, he or she should make sure to address these findings in the variance application and supporting materials, as well as when presenting the case to the Board.

#### **(a) Hardship: Focus on Property, Not People**

To grant a variance, the Board must find that strict application of a zoning regulation would create a “hardship” that is “unique to the property and not generally characteristic of the area in which the property is located.” There is no clear-cut, universal definition of what constitutes a “hardship”; each case will vary according to the type of property involved and the nature of the variance requested.

That said, the following guidelines are based on decisions of the Texas courts and the Board’s experience over the years. ***In general, these are the factors the Board considers in determining whether a “hardship” exists:***

- ✓ A hardship cannot be personal, but must be based on unique physical features of the property for which the variance is sought.
- Courts have held that: “[A] hardship must not be self-imposed, nor financial only, and must relate to the very property for which a variance is sought, i.e. a condition unique, oppressive, and not common to other property.”

- Common examples of hardship include lots with steep slopes, topographical restraints, unusually small lot area, or irregular lot shapes. Trees may constitute a hardship, if they are required to be preserved or if an applicant wants to preserve them.
  - Personal circumstances, such as financial difficulties or troubles with neighbors, cannot be the sole basis for finding a hardship. An applicant may mention such factors, but should focus primarily on characteristics of the property itself.
- ✓ A hardship cannot be self-created.
- An applicant for a permit or site plan cannot claim a hardship based on conditions that he or she is responsible for creating.
  - For example, if a structure is designed in a manner that fails to comply with regulations, the structure’s non-compliance isn’t a hardship. Or, if a landowner subdivides a lot into irregular pieces, he or she can’t rely on their irregular shape to prove a hardship.
- ✓ A hardship must be unique to the property, not general to the area where it’s located.
- If steep slopes or small lots are common to a particular area, then neither condition is sufficiently unique to constitute a hardship by itself.
  - If a lot is entitled under city code to “small lot amnesty,” which automatically relaxes certain development regulations for small lots, then lot size alone should not be relied on as evidence of a hardship. Small lot amnesty was approved with the understanding that, with the exception of minimum lot area, development would meet other site development regulations.
  - The City’s regulations alone cannot be the hardship. For example, an applicant cannot request a height variance and

claim that the restrictions on building height constitute a hardship. The applicant must focus on unique features of his or her property.

### **(b) Reasonable Use: Not “Highest & Best” Use**

To grant a variance, the Board of Adjustment must also find that the regulation “does not allow for a reasonable use of property.” As with hardship, there is no clear-cut answer to what constitutes reasonable use. However, the following guidelines are helpful:

✓ A property is not left with no reasonable use just because a regulation limits the size or design of a structure or increases development costs.

✓ A property does not need to be left completely undevelopable in order for the Board to find that a regulation does not allow for a reasonable use.

— Depriving a residential lot of amenities commonly associated with a residence may constitute a lack of reasonable use. However, as with all variances, there must be a hardship related to physical features of the property such that there is no feasible alternative to accommodate the amenity without a variance. And if an amenity requires increasing utilization of the site, reducing the size and scale of the development should also be considered as a tradeoff for the amenity.

— In general, the fact that a regulation reduces the potential profitability of an otherwise developable commercial or residential property does not constitute a lack of reasonable use.

### **(c) Area Character & Purpose of Regulations**

In addition to the “hardship” and “no reasonable use” findings discussed above, the Board of Adjustment cannot grant a variance unless it finds that development under the variance would not:

- alter the character of the area adjacent to the property;
- impair the use of adjacent property that conforms with City regulations; or
- impair the purposes of the applicable zoning regulations.

These criteria require the Board of Adjustment to consider the potential impacts of granting a variance on the surrounding area. An applicant should be able to show the Board that the variance will not significantly affect neighborhood character or harm adjacent properties. This can be done most effectively by photographs of the surrounding area, as well as letters or testimony from neighbors and, if possible, from the neighborhood association or neighborhood plan contact team.

While there are no hard and fast rules, many factors may result in altering area character. For example, increasing traffic to adjacent streets, reducing tree canopy, or diminishing privacy to adjacent properties could have the effect of altering area character. Development that exceeds the size and scale typical of properties in the vicinity may also alter area character.

An applicant should also be able to explain, in general terms, how the variance will not significantly impair the purpose of the regulation. For example, a residential setback restriction is intended to protect privacy, provide for open space, and avoid the aesthetic and safety concerns associated with over-crowding. An applicant requesting a setback variance, therefore, should be able to explain how decreasing the setback will not undermine those objectives. Appendix E summarizes the goals behind several important city regulations.

### **3. *Special Types of Variances.***

The requirements discussed above apply to all variances considered by the Board of Adjustment, and in many cases those are the only requirements that must be met to obtain a variance. Each of the variances discussed below, however, has additional requirements or considerations.

## APPENDIX A

### Checklist of Steps for Variances:

1. **Determine what zoning regulations apply to your property.** Consider those regulations impact development of the property—i.e., yard setbacks, limits on height and impervious cover, etc.

2. **Design what you want to build.**

3. **Determine if a variance is needed**—i.e., does your proposed design fit within what's allowed by the zoning regulations.

4. **If a variance is needed, consider altering the design to avoid the need for a variance.**

5. **Establish facts that support the legal requirements for a variance:**

- a. Hardship”
- b. “Reasonable Use”
- c. “Area Character”

See pages 7-12 of the Guidebook for an explanation of these requirements.

6. **Develop evidence to support your variance request.** This should include drawings, pictures, and evidence that you contacted your neighbors, neighborhood association, and/or neighborhood plan contact team regarding your variance request. *The more significant the variance, the more detailed and comprehensive the evidence should be.*

7. **Fill-out the variance application and include your supporting evidence.** The application form is included in Appendix B and is available from city staff.

8. **Submit your variance application, with the required fee, and work with staff to schedule the hearing.** If your neighbors, neighborhood association, or neighborhood plan contact team are interested in the case, try to find a date that works with them.